Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Appropriate Framework for Broadband	)	
Access to the Internet over Wireline Facilities	)	CC Docket No. 02-33
	)	
Universal Service Obligations of Broadband	)	
Providers	)	
	)	
Computer III Further Remand Proceedings:	)	CC Docket Nos. 95-20, 98-10
Bell Operating Company Provision of	)	
Enhanced Services; 1998 Biennial Regulatory	)	
Review – Review of Computer III and ONA	)	
Safeguards and Requirements	)	

REPLY COMMENTS OF CALIFORNIA INTERNET SERVICE PROVIDERS ASSOCIATION

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Dated: July 1, 2002

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REPLY COMMENTS OF CALIFORNIA INTERNET SERVICE PROVIDERS ASSOCIATION

The California Internet Service Providers Association ("CISPA") submits these reply comments in the above-captioned proceeding.[1] As explained more fully below, CISPA urges the Commission not to adopt its proposed information services classification, and corresponding reduction in regulation, of broadband Internet access service. Rather than promoting the deployment of broadband, such a regime would reduce the incumbent local exchange carriers ("ILECs") incentives to construct broadband networks, reduce the ability of Internet Service Providers ("ISPs") to develop and provide innovative services, and harm competition.

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[1] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Notice of Proposed Rulemaking, CC Docket No. 02-33, FCC 02-42, released February 15, 2002 ("*NPRM*").

I. INTRODUCTION AND SUMMARY

Significantly, only the comments of the Bell Operating Companies ("BOCs"), the entities that stand to benefit most from the Commission's proposed reclassification of broadband Internet access service, support the view that the broadband transmission services that they are currently required to provide to unaffiliated Internet Service Providers ("ISPs") on a nondiscriminatory basis pursuant to Title II of the Act should, or could, be converted from common carriage to private carriage. Nearly all of the other commenters, state commissions, ISPs, the Secretary of Defense, consumer groups, the entire competitive industry, and even other ILECs oppose the deregulation of the BOCs broadband transmission services as contemplated by the *NPRM*. The opposition of nearly every group in the industry to the proposal in the *NPRM* should by itself be a sufficient reason not to adopt the proposal. Nonetheless, the record in this and other proceedings demonstrates that conversion of ILEC broadband services to private carriage would not achieve the Commission's broadband goals. In fact, rather than promoting broadband deployment, the conversion of ILEC broadband services would reduce ILEC incentives to construct broadband networks, harm the ability of the competitive industry to construct and expand their own networks, and impede the ability of non-ILEC-affiliated ISPs to provide innovative services.

Indeed, the Supreme Court recently definitively invalidated the core of the BOCs' broadband public policy initiative when it carefully explained why ILEC obligations to provide unbundled network elements ("UNEs") at TELRIC prices does not discourage facilities-based investment by either ILECs or the competitive industry. That decision applied to provision of network elements to the ILECs' telecommunications service competitors. There is even less reason in this proceeding to accept the ILECs' similar arguments with respect to their obligation

to provide nondiscriminatory access to basic telecommunications transmission services to ISPs. Accordingly, the Commission should follow the Supreme Court's lead and use this proceeding to reject the BOCs' broadband arguments, which are, in any event, nothing more than the latest version of the BOCs' standard argument to the effect that if regulators simply permit them to thwart competition they will provide new services to consumers.

A number of the initial comments also highlight the crucial error of the definitional approach to deregulation of broadband apparently contemplated in the *NPRM*. In the *NPRM* the Commission tentatively concluded that wireline broadband Internet access service is an information service provided via "telecommunications" but not via "telecommunications service." What the *NPRM* failed to recognize, as admitted by the BOCs in their initial comments, is the fact that wireline broadband Internet access service is offered via telecommunications service because the Commission's own rules compel facilities-based carriers to provide information services as customers of their own tariffed telecommunications services. In other words, the transmission component of the BOCs' own broadband information services is a telecommunications service. Therefore, the Commission erred in concluding that information services provided by a carrier over its own facilities are not provided via a telecommunications service.

Moreover, the application of Title II and unbundling requirements to the transmission component of wireline broadband Internet access service is consistent with the statutory definitions of "information service." Under the statutory definition, an information service is provided "via telecommunications." A "telecommunications service," in turn, necessarily contains "telecommunications." Thus, the requirement that BOCs provide information services as customers of their own tariffed telecommunications service means that the information service

is also provided "via telecommunications" notwithstanding the fact that it is also provided by means of a "telecommunications service." Therefore, the apparent conclusion of the *NPRM* that the Commission ought to, or must, abolish Title II regulation and *Computer II/III* safeguards because of the statutory definition of information service is incorrect and, consequently, it would be unlawful for the Commission to take the radical step of deregulating ILEC broadband Internet access based on that erroneous conclusion.

In addition to the lack of any statutory basis for deregulation of ILEC broadband Internet access services, there is no other reason or lawful basis for the Commission to abolish Title II regulation of ILEC broadband services, or *Computer II/III* safeguards. As explained below, the Commission does not have the authority to convert ILEC broadband services to private carriage, and even if the Commission had such authority, it should not exercise that authority because of the strong public interest considerations weighing against such action, including elimination of the ILECs' ability to discriminate systematically against independent ISPs in order to leverage control of basic transmission services into control of the broadband information services marketplace.

Even assuming the existence of substantial intermodal competition from cable operators in most markets, which has not been demonstrated, the removal of Title II and *Computer II/III* safeguards from LECs and cable operators would merely encourage the establishment of an undesirable duopoly in the broadband information services marketplace rather than a fully competitive market. At most, the BOCs' arguments concerning intermodal competition identify the potential for a duopoly in the provision of consumer Internet access service, but do not demonstrate that robust or significant intermodal competition in broadband business services will be developed.

Nor does the *Cable Modem Declaratory Ruling* provide any basis for deregulation of the transmission component of wireline broadband Internet access service through classification as private carriage. As an initial matter, the Commission erred in that decision in determining that cable operators that provide telecommunications services, such as voice telephone service, are not already subject to Title II and *Computer II/III* unbundling obligations because the Commission's existing rules require all facilities-based carriers to provide information services as customers of their own nondiscriminatory unbundled offering of underlying transmission service. Thus, because cable operators are carriers by virtue of their provision of voice telecommunications, they, like competitive local exchange carriers ("CLECs"), are subject to Title II and unbundling obligations. In addition, while the Commission's waiver of *Computer II/III* unbundling obligations was at least premised on the correct view that Title II and *Computer II/III* were applicable to cable operators, the Commission's waiver of those requirements was erroneous because the Commission did not obtain a record for a waiver or adequately address its own standards for waiver under *WAIT Radio*.

Moreover, even assuming that the Commission's application of the statutory definition to cable operators that do not provide telephone service is correct, such providers are distinguishable from wireline providers because wireline providers are already subject to Title II. For example, as noted above and explained further in these comments, wireline broadband information service providers are required under the Act and the Commission's rules to unbundle transmission services from their information service offerings, and the Commission may not remove that requirement on the basis of the statutory definitions. Therefore, contrary to the BOCs' arguments, the *Cable Modem Declaratory Ruling* does not provide any basis for the reclassification proposed in this proceeding.

The Commission should also reject BOC arguments that a consistent regulatory approach to broadband requires that the transmission component of wireline broadband Internet access service be shifted to Title I regulation. Consistent bad regulatory policies are not appropriate or lawful simply by virtue of the fact that they are consistent. Thus, it would be inappropriate for the Commission to deregulate ILEC broadband services on the basis that such deregulation is consistent with the Commission's treatment of cable modem service. Rather, the Commission may create a consistent regulatory framework by maintaining its requirement that all facilities-based carriers, including those also providing video programming subject to Title VI, are subject to Title II and *Computer II/III* unbundling obligations. Such an approach would not preclude creation of a suitable deregulatory approach to telecommunications, or necessarily require that all carriers bear equal regulatory burdens, because the Commission may forbear from application of Title II obligations in limited circumstances as appropriate.

For these reasons, the Commission should uphold continued application of Title II and *Computer II/II* safeguards to the transmission component of wireline broadband Internet access service in order to ensure that its broadband policy goals are met and not undermined.

II. "PRIVATE CARRIAGE" REGULATION OF THE TRANSMISSION COMPONENT OF WIRELINE BROADBAND INTERNET ACCESS SERVICE WOULD NOT PROMOTE THE COMMISSION'S BROADBAND GOALS

A. If Left Unregulated, ILECs Would Delay Rather Than Speed Up Introduction of Broadband Services

As noted in many of the initial comments, ILECs have strong financial and other incentives not to deploy new, broadband services because new more efficient services would

cannibalize legacy services and revenue streams.[2] In fact, as some observers have suggested, ILECs may well face a potentially negative financial future as a result of the inevitable undermining of existing revenue streams caused by the deployment of more efficient technologies. BOCs are already experiencing negative line growth in part because digital technology reduces the need for circuit switched lines.[3] CLECs, on the other hand, do not face this issue, and thus do not have the same incentives to delay deployment of innovative technologies ILEC have, because CLECs can deploy the most efficient technology initially.

For example, DSL service threatens revenues associated with the more costly and lower-speed alternative of a second residential line where incremental profit margins exceed 70%.[4] Since, in most instances, subscribers who receive DSL service cancel their existing second line, DSL technology, which offers the customer high-speed access and thus greater flexibility and access to advanced services, threatens the low cost and high profit margins associated with second residential lines. For this reason, BOCs delayed introduction of DSL service until competition from CLECs offering DSL services, the provision of which may be hampered under the Commission's proposal, forced them to introduce it. In addition, contrary to the BOCs' claims, it is because BOCs voluntarily delayed introducing DSL service, not because of unbundling obligations, that cable operators obtained an early lead in the provision of Internet access service to consumers.

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[2] Comments of Cbeyond Communications, Inc., DSLnet Communications, Inc., El Paso Networks, LLC, Focal Communications, Inc., and Pac-West Telecom, Inc. ("Cbeyond *et al.* Comments") CC Docket Nos. 02-33, 95-20 and 98-10, filed May 3, 2002, at 12-13.

[3] According to Verizon, ILECs have experienced negative line growth since 2001. Letter from Verizon to Secretary, CC Docket No. 02-33, June 24, 2002.

[4] *See* AT&T Comments at 65.

In addition, the ILECs are reluctant to take part in the trend toward innovative packet-switched networks using IP to deliver all services. In a packet-switched environment, it will be increasingly difficult for ILECs to charge current premium prices for voice and access services that are possible with the legacy circuit switched network because it is possible to provide more services for a reduced price on packet-switched networks using IP. Significantly, a number of innovative CLECs are already doing so.

ILECs can avoid the potential erosion of current revenues as a result of these new technologies if they can forestall the competition that would require them to deploy the new, more efficient technologies being deployed by their competitors. Thus, the rationale for the ILEC's strategy in this and other proceedings in seeking to immunize broadband from any unbundling obligations is clear. If ILECs can prevent CLECs from being able to use broadband network elements more efficiently than do the ILECs themselves, the ILECs can artificially preserve their existing revenues. Obviously, however, this is not a sufficient reason for granting the ILECs' request. Instead of permitting the ILECs to forestall competition and the development of new technologies, the Commission should promote unbundling in order to permit CLECs and their customers to provide more and better services to consumers and businesses at more affordable prices.

B. ILECs Are Already Deploying Broadband Infrastructure

The ILECs' own financial data as well the initial comments demonstrate that the ILECs do not need broadband deregulation in order to deploy broadband infrastructure. A number of commenters emphasized that the ILECs have already widely deployed broadband capability and plan to continue to install even more robust broadband capability in their networks, including

fiber in the loop.[5] In fact, the vast majority of commenters, including state regulatory commissions, ISPs, and CLECs, agree that there is no problem with the pace of ILEC broadband deployment.[6] This view is further supported by FCC's conclusion in its *Third Report on the Availability of High-Speed Advanced Telecommunications Services* that overall, the deployment of advanced telecommunications capability to all Americans is reasonable and timely and that the trend of investment in broadband facilities is expected to continue.[7]

In fact, ILECs continue to announce enormous growth in both broadband deployment and subscribers. For example, in responding to questions concerning the impact of the recent Supreme Court decision in *Verizon v. FCC*,[8] Ron Dykes, BellSouth Corp.'s Chief Financial Officer, noted that BellSouth expects to have 1.1 million DSL customers by the end of 2002. This would represent an increase of 480,000 DSL customers over the number of customers at the end of 2001.[9] Thus, BellSouth's own data demonstrates that BellSouth is forecasting a growth rate of greater than 74% in its broadband customer base. The forecasts of other ILECs are similar.

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5 Cbeyond *et al.* Comments at 7-9.

6 *See* AOL Time Warner Comments at 23; AT&T Comments at 70; Arizona Consumer Council *et al.* Comments at 12; Big Planet, Inc. Comments at 60-61; Business Telecom, Inc. *et al.* Comments at 58-59; Cbeyond Communications, LLC *et al.* at 9-10; Covad Comments at 7-10; DSL.net Communications, LLC Comments at 10; Earthlink, Inc. Comments at 20-21; Florida Public Service Commission Comments at 5; McLeodUSA Telecommunications Services, Inc. Comments at 4-5; Mpower Communications Corp. Comments at 6; Public Utilities Commission of Ohio Comments at 33; Oregon Public Utility Commission Comments at 1,3; Sprint Comments at 7; TDS Telecommunications Corporation Comments at 8; Time Warner Telecom Comments at 8-9; US LEC Comments at 54-56; Wisconsin Public Service Commission Comments at 2.WorldCom *et al.* Comments at 30.

7 *See Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, CC Docket No. 98-146, Report, FCC 02-33 (2002) ("*Third Report*").

8 *Verizon Communications, Inc., et al., v. FCC*, 535 U.S. ___ (2002).

9 Hollister H. Hovey, *BellSouth CFO Still Sees 1.1M DSL Customer by 2002 End*, DOW JONES NEW SERV., May 15, 2002, BellSouth had 620,000 DSL customers at the end of 2001. *See id.*

The Commission should not place great weight on the ILECs' claim that the existing regulatory regime restricts their deployment of broadband services when the ILECs' own data and press releases directly conflicts with this claim. Indeed, on the contrary, since ILECs are rapidly deploying broadband infrastructure, there is no basis for concluding that "private carriage" regulation is necessary to promote investment.

C. The Supreme Court Has Rejected The Argument That Regulation Acts as a Disincentive to Broadband Facilities Investment

The Supreme Court recently directly addressed the issue raised by the ILECs in this proceeding -- whether the provision of UNEs to CLECs discourages broadband investment – and concluded that the current regulatory regime promoted a substantial amount of investment. The Supreme Court recognized that the regulatory framework established in the 1996 Act and implemented by the Commission has resulted in extraordinary investment in telecommunications facilities. Since the passage of the 1996 Act, ILECs have invested over $100 billion and competitive carriers have invested over $55 billion.[10] In light of the recent Supreme Court decision in *Verizon v. FCC*, the Commission can, and must, reject ILEC arguments that Title II regulation and unbundling obligations discourage investment in broadband facilities.[11] The Commission should adopt the perspective of the Supreme Court that "a regulatory scheme that can boast such substantial competitive spending over a 4-year period is not easily described as an unreasonable way to promote competitive investment in facilities."[12] Accordingly, there is no basis for accepting ILEC generalized arguments that eliminating broadband unbundling obligations would promote broadband.

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10 *See Verizon v. FCC*, at p.46 n.33, p.45.

11 *See Verizon v. FCC*, at p.32.

Similarly, there is no evidence that the unbundling obligations of *Computer II/III* discourage investment in broadband infrastructure. The Act permits CLECs to use UNEs to compete with ILECs in provision of basic telecommunications services. The *Computer II/III* unbundling obligations, on the other hand, provide competitors nondiscriminatory access to basic transmission services used by the ILEC for its own information services to ensure that the ILECs are not able to leverage their control over the local network into control of the information services marketplace. Under this regime, the Commission permitted ILECs to provide information services, including wireline broadband Internet access services, only as customers of their own tariffed telecommunications service offerings. Therefore, given the different purposes and applications of the unbundling requirements of the Act and *Computer II/III*, there is no basis for a claim that the *Computer II/III* unbundling requirements discourage investment in broadband telecommunications infrastructure. In other words, even assuming *arguendo* Section 251(c)(3) unbundling obligations discouraged ILEC and/or CLEC investment in broadband telecommunications infrastructure, which is not the case, there is no reason to believe that requiring ILECs to provide information services as customers of their own tariffed transmission services discourages investment in broadband telecommunications infrastructure. This is the case because the *Computer II/III* unbundling obligations, unlike Section 251(c)(3) obligations, are intended primarily to assure competition in the information services market, not the telecommunications services market. In any event, as the Commission found in *Computer III*, a benefit of competition in the information services marketplace is that it also promotes demand

[12] *Verizon v. FCC*, at p.46.

for use of ILEC broadband transmission services.[13] Therefore, application of Title II and *Computer II/III* safeguards to ILEC broadband transmission services promotes, rather than inhibits, broadband investment.

D. Demand for Broadband Services Rather Than Supply Governs the Pace of Broadband Deployment

As demonstrated above, ILECs have deployed, and are continuing to deploy, broadband at a fast pace, and are experiencing incredible growth in subscribers for their new broadband services in the current regulatory environment. If, in spite of this evidence, the Commission nonetheless determines erroneously that further steps are necessary to stimulate the pace of broadband deployment, the Commission should focus its efforts on issues relating to the demand for broadband services. As a number of the initial comments noted, there is broad agreement throughout the industry that any issues associated with the pace of broadband deployment are attributable to the demand for broadband services, rather than the supply of those services.[14] In fact, the overwhelming majority of the commenters, including state regulatory agencies, consumer groups, ISPs, and CLECs, take the same point of view in their comments.[15] Significantly, these commenters question why there is a need to dismantle the existing regulatory structure in order to create incentives for ILEC broadband deployment when all indications,

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[13] *Policy and Rules Concerning the Interstate, Interexchange Marketplace Implementation at Section 254(g) of the Communications Act of 1934, as amended*, 16 FCC Rcd. 7418 ("*CPE/Enhanced Services Unbundling Order*").

[14] Cbeyond, *et al.* Comments at 9-11.

[15] *See* AOL Time Warner Comments at 23; AT&T Comments at 70; Arizona Consumer Council *et al.* Comments at 12; Big Planet, Inc. Comments at 60-61; Business Telecom, Inc. *et al.* Comments at 58-59; Cbeyond Communications, LLC *et al.* at 9-10; Covad Comments at 7-10; DSL.net Communications, LLC Comments at 10; Earthlink, Inc. Comments at 20-21; Florida Public Service Commission Comments at 5; McLeodUSA Telecommunications Services, Inc. Comments at 4-5; Mpower Communications Corp. Comments at 6; Public Utilities Commission of Ohio Comments at 33; Oregon Public Utility Commission Comments at 1,3; Sprint Comments at 7; TDS Telecommunications Corporation Comments at 8; Time Warner Telecom Comments at 8-9;

including the ILECs own data, suggest that the pace of deployment is and will continue to keep pace with or exceed demand. Accordingly, the record demonstrates that if the Commission's goal is to accelerate the deployment of affordable, high quality, broadband services to consumers, it should permit marketplace demand to govern the pace of deployment rather than deregulating ILEC provision of such services.

III. THE COMMISSION ERRED IN TENTATIVELY CONCLUDING THAT THE TRANSMISSION COMPONENT OF WIRELINE BROADBAND INTERNET ACCESS SERVICE IS NOT TELECOMMUNICATIONS SERVICE

A. The Commission's Rules Compel ILECs to Provide Wireline Broadband Internet Access Via Telecommunications Service

The *NPRM* fails to recognize that the Commission has already addressed the terms and conditions under which facilities-based common carriers may provide information services over their own facilities, and has required these carriers to provide information services, including Internet access service, as customers of their own tariffed telecommunications services. Specifically, the Commission requires carriers that "own common carrier transmission facilities and provide enhanced services unbundle basic from enhanced services and offer transmission capacity to other enhanced service providers under the same tariffed terms and conditions under which they provide such services to their own enhanced service operations."[16] Thus, a carrier would violate the Commission's rules if it attempted to provide wireline broadband information service over its own facilities in any other manner than as a customer of its transmission

US LEC Comments at 54-56; Wisconsin Public Service Commission Comments at 2.WorldCom *et al.* Comments at 30.

[16] *CPE/Enhanced Services Unbundling Order*, 16 FCC Rcd. at 7421 (citing *Independent Data Communications Manufacturers Association, Inc. Petition for Declaratory Ruling and American Telephone and Telegraph Company Petition for Declaratory Ruling, Memorandum Opinion and Order*, 10 FCC Rcd. 13717, 13719 (1995) ("*Frame Relay Order*"); and *Competition in the Interstate Interexchange Marketplace*, CC Docket No. 90-132, Memorandum Opinion and Order on Reconsideration, 10 FCC Rcd. 4562, 4580 (1995).

capability offered on a nondiscriminatory tariffed basis over its own facilities. The BOCs' initial comments acknowledge that the transmission component of wireline broadband Internet access service is a "telecommunications service" by virtue of these rules.[17] Thus, the Commission's tentative conclusion that the transmission component of wireline broadband Internet access service is only telecommunications, rather than a telecommunications service, is erroneous by virtue of the fact that the Commission's own rules require that ILECs provide broadband information services as customers of their own common carrier transmission services. Indeed, the *NPRM*'s failure to recognize this renders its application of the statutory definitions of "information service" to wireline broadband Internet access service nonsensical and arbitrary. Accordingly, the Commission should reject its tentative conclusion that the transmission component of wireline broadband Internet access service is only "telecommunications" and not "telecommunications service," and should continue to apply its current regulatory framework to ILEC broadband Internet access service.

B. The Current Regulatory Framework Is Consistent With Statutory Definitions

The Commission's requirement that carriers offer information service over their own facilities as customers of their own tariffed telecommunications services is consistent with the statutory definition of "information service." "Information service is defined in the Act as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making information available via telecommunications ..."[18] "Telecommunications service" is defined in the Act as "the offering of telecommunications for a fee directly to the

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17 *See, e.g.*, SBC Comments at 6.

18 47 U.S.C. Section 3(20).

public..."[19] In the *NPRM*, the Commission reasoned that when a carrier provides broadband Internet access service over its own facilities, it is using telecommunications, but not offering it to anyone, and that, therefore, the transmission component of wireline broadband Internet access is not a telecommunications service. As discussed above, however, under the Commission's own rules, carriers offering broadband Internet access service over their own facilities must do so as customers of their own tariffed telecommunications service. Further, because "telecommunications service" by definition encompasses "telecommunications," ILEC provision of wireline broadband Internet access service under the Commission's rules is offered via telecommunications as well as by means of a telecommunications service. Therefore, the current regulatory framework is completely consistent with the statutory definitions of "information service," "telecommunications," and "telecommunications service."

As such, the *NPRM* seriously errs to the extent it assumes that the Commission must change the current regulatory framework governing wireline broadband Internet access service based on the statutory definition of "information service," "telecommunications service," and/or "telecommunications." Because these statutory definitions are consistent with the current regulatory framework, they do not provide any basis for modifying the current application of Title II and *Computer II/III* safeguards to wireline broadband Internet access service. On the contrary, it would be arbitrary and unlawful for the Commission to change the current regulatory framework governing wireline broadband Internet access service based its erroneous assumption that a change is required on the basis of the foregoing statutory definitions.

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[19] 47 U.S.C. Section 3(46).

IV. THE ILECS' CONCEPT OF AN "INTEGRATED" WIRELINE BROADBAND INTERNET ACCESS SERVICE IS A FICTION CREATED TO JUSTIFY THEIR PLEA FOR A LIFTING OF COMPETITIVE SAFEGUARDS

In their initial comments, the BOCs fabricate the ridiculous and self-serving characterization of wireline broadband Internet access service as a "naturally" "integrated" service, and urge the Commission to accept that fabrication as reality.[20] Similarly, the BOCs describe the *Computer III* unbundling requirements, which were intended to protect against ILEC discrimination in the provision of information services as "artificial."[21] SBC states that wireline providers should not be required to "artificially structure any of its broadband information services to create a separate telecommunications service offering."[22] While the BOCs may be deluded into believing their fiction, the potential for discrimination by the BOCs in the absence of appropriate safeguards is real, and so is the need for continued application of the *Computer III* safeguards.

The BOCs' characterization of "integrated" wireline broadband Internet access service as "natural" is nothing more than another attempt by the BOCs to obscure their request for permission to avoid being broadband common carriers and to be permitted to discriminate in provision of basic telecommunications services. While the BOCs may view safeguards as an unnatural constraint on their incentive and ability to discriminate, this does not mean that such safeguards are not necessary, nor does it justify the sweeping deregulation the BOCs seek in this proceeding. Instead, for all the reasons stated in these and other reply comments, the Commission may not, and should not, eliminate ILECs' status as broadband common carriers

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20 *See, e.g.*, SBC Comments at 2, 15, 17

21 *See, e.g.*, SBC Comments at 6.

22 *Id.*

subject to *Computer III* and other safeguards against discrimination. Clearly, the BOCs would like to have the ability to systematically discriminate against their competitors that would be permitted under "private carriage;" however, for all the reasons stated herein, and to preserve the current competitive environment, which has produced billions of dollars of broadband investment, the Commission should not permit them to do so.

CISPA notes that because of the existence of competitive safeguards, "integrated" provision of wireline broadband Internet access service is prohibited and does not exist. Therefore, whatever merit the Commission's tentative conclusions in the *NPRM* concerning application of the statutory definition of "information service" and "telecommunications service" to integrated wireline broadband Internet access service may have, it is of no current consequence because the Commission's rules appropriately foreclose integrated provision of wireline broadband Internet access service. Accordingly, the Commission should continue to prohibit this "integrated" provision of wireline broadband Internet access service because that concept is nothing more than a claim by the ILECs that they should be free from fundamental common carrier obligations.

V. THE *CABLE MODEM DECLARATORY RULING* DOES NOT PROVIDE GUIDANCE FOR THIS PROCEEDING

A. The Commission's Obligation To Protect Against Existing Discriminatory Practices Precludes A "Private Carriage" Classification for ILEC Broadband Services

The BOCs' principal argument in support of their efforts to be free to discriminate is that the *Cable Modem Declaratory Ruling* requires that the Commission determine in this proceeding that current Title II regulation of the transmission component of wireline broadband Internet

access service be converted to "private carriage."[23] The BOCS are wrong for several reasons. In the *Cable Modem Declaratory Ruling*, the Commission determined, based on a careful factual examination of cable operators' current practices, that cable modem service is a single offering of an information service without a separate offering of a telecommunications service. The Commission stated that "[w]e are not aware of any cable modem service provider that has made a stand-alone offering of transmission for a fee directly to the public, or to such classes of users as to be effectively available directly to the public."[24] On the other hand, the Commission noted that cable operators did provide "open access" to some ISPs, but declined to do so for others. Therefore, the Commission concluded that cable operators do not make a common carrier offering of broadband transmission services but instead at most engaged in "private carriage." On this basis, the Commission further concluded that cable operators were not required to make a nondiscriminatory offering of their broadband telecommunications capability because they were only engaged in private carriage.[25]

This approach to determining whether cable operators should be required to offer their broadband transmission capability on a common carrier basis was erroneous as applied to cable operators and, in any event, provides no guidance for the evaluation of wireline broadband Internet access because it permits the regulated entity to self-select its own mode of regulation simply by acting in its preferred way. In essence, the Commission concluded in the *Cable Modem Declaratory Ruling* that cable operators should continue to be free to discriminate against small ISPs by denying them access, and among other ISPs by dealing with them on

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23 SBC Comments at 16-17; BellSouth Comments at 11-12; Verizon Comments at 4.

24 *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities, Internet Over Cable Declaratory Ruling*, Declaratory Ruling and Notice of Proposed Rulemaking, FCC 02-77, GN Docket No. 00-185, CS Docket No. 02-52, at ¶ 40 (rel. March 15, 2002) ("*Cable Modem Declaratory Ruling*").

different terms and conditions, because this is what cable operators were currently doing. Noticeably missing from the Commission's analysis is a recognition that Congress charged the Commission with the responsibility of regulating in the public interest and may, under that authority, compel cable operators to make a nondiscriminatory offering of their broadband telecommunications offering. Because the Commission failed to perform any serious public interest evaluation of whether cable operators should be subject to nondiscrimination obligations, and instead limited itself to the role of passive observer of cable operators current discriminatory practices, the *Cable Modem Declaratory Ruling* was arbitrary and unlawful. This shortcoming by itself is reason enough to reject the *Cable Modem Declaratory Ruling* as providing any guidance for this proceeding.

B. Imposition of NonDiscrimination Safeguards Under Title I Is An Oxymoron

In the *Cable Modem Declaratory Ruling*, the Commission determined that cable broadband transmission service was subject to Title I but nonetheless requested comment on whether it should impose nondiscrimination obligations under Title I. Such an approach is self-contradictory. Private carriage, as described by the Commission, permits a carrier to choose whether, and on what terms, to deal with customers on an individual basis. On the other hand, common carriage subject to Title II is characterized by a requirement that the offer the service on nondiscriminatory terms and conditions. If the Commission were to impose an obligation on cable operators to provide broadband transmission services on a nondiscriminatory basis, which it should do, this would convert the offering to common carriage subject to Title II. As stated elsewhere in these comments, nondiscrimination safeguards for access to the transmission

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[25] *Id.*

component of wireline broadband Internet access must, and should be, imposed under Title II, as is currently the case.

C. Wireline Broadband Internet Access Service Is Already Subject to Title II

As noted above, the Commission has permitted cable operators to discriminate in provision of broadband access service and has determined erroneously that such services are not subject to Title II. On the other hand, every facilities-based telephone company that offers wireline broadband Internet access service must do so as a customer of its own tariffed offering of transmission service for a fee. The Commission's rules require this result. Similarly, as a result of the Commission's rules, "integrated" wireline broadband Internet access service does not exist. Consequently, wireline broadband Internet access service is completely distinguishable from cable modem service because it is provided by means of a separate offering of telecommunications service. Regardless of whether there is any merit to the Commission's conclusion in the *Cable Modem Declaratory Ruling* that cable modem service is a single "integrated" offering of an information service, that conclusion provides no guidance for wireline broadband Internet access service, because telephone companies, unlike cable operators, are not permitted to provide the such access service on an integrated basis free from the obligation to provide a separate telecommunications service offering.

VI. THE COMMISSION MAY NOT RECLASSIFY THE TRANSMISSION COMPONENT OF WIRELINE BROADBAND INTERNET ACCESS SERVICES AS PRIVATE CARRIAGE

As discussed above, the statutory definitions of "telecommunications service" and "information service" do not provide any basis for converting the transmission component of wireline broadband Internet access service to "private carriage" because current rules requiring that it be offered as a telecommunications service subject to Title II are consistent with the

statutory definitions. Thus, even assuming the *Cable Modem Declaratory Ruling* is correct, it does not resolve the issues in this proceeding because the transmission component of cable modem service has not been subject to Title II (again assuming that the Commission's determination to that effect in the *Cable Modem Declaratory Ruling* was correct). Further, as explained in other parties' initial comments, and not disputed by the BOCs in their comments, ILECs' offering of the transmission component of wireline broadband Internet access service meets all of the criteria of common carriage under *NARUC I* and *NARUC II*. [26] For these reasons, the Commission may not simply grant the BOCs' requests for permission to discriminate against ISP competitors by redefining the transmission component of wireline broadband Internet access service as "private carriage."

Indeed, it is clear for a number of other reasons that the Commission does not have the authority to take this radical step. As an initial matter, as noted previously, a policy that would permit ILECs to engage in systematic discrimination against competing information service providers, which would be the effect of a "private carriage" classification for broadband Internet access service, would not serve the public interest. Consequently, the Commission could not possibly justify such a radical solely on the basis that it is a good idea, which would not be a sufficient basis under the Act in any event.

Moreover, Congress premised the 1996 Act, including the various statutory definitions at issue in this proceeding, on the definitions of basic and enhanced services, and the regulatory

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[26] *National Assoc of Regulatory Util. Comm'rs v. FCC*, 525 F.2d 630, 644 (D.C. Cir. 1976) ("*NARUC I*"); *National Assoc. of Regulatory Util. Comm'rs v. FCC*, 533 F.2d 601 (D.C. Cir. 1976) ("*NARUC II*"). "A particular system is a common carrier by virtue of its functions, rather than because it is declared to be so." *NARUC I*, 525 F.2d at 644. Even if the Commission were to base its decision solely on the goals of Section 706, it would find that Title II regulation of the broadband transmission services is necessary to promote competition and to encourage further deployment of advanced services to all Americans.

framework governing those services, established in *Computer II* and *Computer III*.[27] Therefore, Congress assumed that BOCs would be subject to the fundamental nondiscrimination safeguard of providing information services only as customers of their own tariffed transmission services.

Further, because Congress specifically established forbearance as a mechanism for deregulating under Title III, Congress could not have intended that the deregulatory goals of the Act be achieved by the blunt and inflexible definitional approach contemplated by the Commission in the *Cable Modem Declaratory Ruling*. Section 10 of the Act permits the Commission to forbear from imposing certain regulations on telecommunications carriers and telecommunications services if such regulation is not necessary to ensure non-discriminatory and just and reasonable rates, terms and conditions, is not necessary to protect consumers, and is in the public interest.[28] However, as demonstrated above and in this proceeding, the ILECs' provision of broadband transmission services fails to meet the Section 10 requirements for regulatory forbearance.[29] On the contrary, Title II regulation and the *Computer Inquiry* requirements are necessary to ensure non-discriminatory and just and reasonable rates, terms and conditions for broadband transmission services; are necessary to protect consumers, who otherwise will be negatively impacted by the ILECs' monopoly on this market; and thus, are in the public interest. In addition, the purpose of the forbearance mechanism in Section 10 would be rendered meaningless if the Commission is permitted to simply reclassify certain ILEC services as private carriage rather than common carriage. Congress could not have intended this

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27 AT&T Comments at 16 (citations omitted).

28 47 U.S.C. § 160.

29 See AT&T Comments at 27-28.

result. Rather, Congress recognized that such services should be deregulated through forbearance when appropriate. Reclassification was not contemplated.

As the California Commission warned:

> There is no evidence that Congress intended that the FCC could achieve the same [deregulatory] result prematurely by unilaterally redefining fundamental terms in the Act, and effectively nullifying section [10]. The FCC cannot accomplish by regulatory fiat what Congress alone has the authority to change.[30]

Congress did not adopt Section 10 only to have the Commission search for another means to deregulate regulated services on its own terms. As the United Church of Christ, *et al.* states, defining broadband services as information services would unlawfully remove these services from the scope of Section 251 and 252 because this would amount to *de facto* forbearance in violation of the standards of Section 10.[31]

Moreover, as shown in the *Non-Dom Proceeding*,[32] the BOCs continue to possess market power in provision of wireline transmission facilities used to provide broadband services,[33] and, as explained below, ISPs' options for broadband Internet access are virtually non-existent. Indeed, the BOCs' continued dominance and market power over key broadband facilities and services require that such services be regulated as common carriage under Title II. Contrary to Qwest's claims,[34]given the BOCs market power over wireline broadband transmission services, the BOCs provision of these services by itself precludes private carriage and Title I "regulation"

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30 California Public Utility Commission Comments at 15.

31 United Church of Christ *et al.* Comments at 14.

32 *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services,* Notice of Proposed Rulemaking, CC Docket No. 01-337, FCC 01-360, released December 20, 2001 ("*Non-Dom Proceeding*").

33 Cbeyond, *et al.* Comments at 31; AT&T Comments at 46-47.

34 Qwest Comments at 16.

of these services. As noted by Congressman Markey (D-MA), "the '96 act was not a deregulation bill. It was a de-monopolization bill."[35] The Commission's proposed approach to deregulation of ILEC wireline broadband Internet access services runs counter to this intent.

The BOCs erroneously presume that the Commission has unlimited discretion to simply reclassify the provision of broadband transmission services as private carriage. For the foregoing reasons, the Commission may not deregulate broadband simply by decreeing that the transmission component of wireline broadband Internet access is no longer common carriage. Accordingly, the Commission should emphatically reject that approach to broadband deregulation in this proceeding.

VII. INTERMODAL COMPETITION DOES NOT WARRANT PRIVATE CARRIAGE TREATMENT OF THE TRANSMISSION COMPONENT OF BOC'S WIRELINE BROADBAND INTERNET ACCESS

The Commission should reject BOC arguments that intermodal competition justifies elimination of their obligation to provide nondiscriminatory access to UNEs or to broadband transmission services they use to provide their own broadband information services for several reasons. First, even if it were true that BOCs face significant intermodal competition in broadband, which it is not, this would at most mean that there is a duopoly in the marketplace, not true competition. However, the Commission has never determined that a duopoly is a sufficient reason to eliminate or reduce common carrier obligations. In any event, the fact that BOCs and cable operators have been raising prices shows that there is no genuine competition for broadband Internet access services.[36] It is also worth noting that BOCs are affiliated with, or

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[35] *Telecommunications Competition and Broadband Deployment: Hearing of the Senate Commerce, Science and Transportation Committee*, May 22, 2002 (statement of Rep. Markey (D-MA)).

[36] Sam Ames, Special ZDNet News, *Look out! Broadband prices rising*, May 30, 2002, http://zdenet.com.com/2100-1105-928512 (citing record cable and DSL price increases).

have significant marketing arrangements with, some of the companies with whom they allegedly compete, such as MSN and Yahoo.[37]

Second, the BOCs have failed to submit any information concerning intermodal competition other than for the consumer market for Internet access service, or justified that such competition justifies the radical regulatory shift proposed by the BOCs. The BOCs so-called "Fact Report" addresses competition in only the "mass market" (their term for residential consumers) and the large business market for broadband services, but virtually all of the cited competition for the business market is from other common carriers, *i.e.* it is not intermodal competition.

Further, even with respect to the mass market, the "Fact Report" admits that only one-third of households currently have access to both cable modem and DSL service[38] and that "[i]n many markets in the U.S. today, only one or two of the four possible broadband alternatives is currently available."[39] Nonetheless, even this evidence of duopoly can be misleading. The California Public Utilities Commission emphasized that SBC is the dominant provider of broadband services to residential and small commercial customers in its service territory.[40] Specifically, the California Commission stated that 45% of Californians who live in areas with broadband capability have only DSL, not cable modem service, available. Moreover, even in those areas where cable modem service is available, the physical plants generally do not overlap

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37 *See, e.g.*, www.sbc.com/Products_Services/data_sheet_08.pdf; http://www.atnewyork.com/news/article.php/8471_1143711.

38 Verizon Attachment 1, Broadband Fact Report at 1.

39 Verizon Attachment 1, Broadband Fact Report at 12.

40 California PUC Comments at 34-37.

to give a *particular household* an actual choice between DSL and cable.[41] As the consumer advocates showed, cable dominates the residential broadband market (with a 75% market share) and DSL[42] dominates the non-residential market (with an 89% market share).[43] Finally, as the Florida Commission argued, because different broadband platforms have different availability and performance criteria, these platforms are not perfect substitutes for one another. To the contrary, "consumers in markets with only one provider per technology platform for broadband service may really be faced with no choice at all, depending on their specific needs."[44]

Accordingly, there is no basis in the current record for the Commission to accept the BOCs sweeping, unsupported assertions that they face significant intermodal competition warranting deregulation. The fact is that the BOCs are seeking to use vague, exaggerated assertions of intermodal competition to justify grant of permission to thwart competition from CLECs and discriminate against ISPs. The Commission should reject BOC arguments on this issue.

VIII. THE COMMISSION SHOULD REJECT BOC EFFORTS TO OBTAIN COMPLETE DEREGULATION THROUGH OVERLY BROAD DEFINITIONS OF BROADBAND

For all the reasons stated herein, there is no basis for concluding that deregulation would promote provision of "broadband." In fact, quite the opposite is true. The freedom to discriminate against competitors that would be accorded to BOCs in any substantial deregulation would slow broadband development by both BOCs and their competitors because BOCs could

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41 California PUC Comments at 35-36.

42 The DSL market is clearly dominated by the BOCs. *See High-Speed Services for Internet Access: Subscriberships as of June 30, 2001*, Industry Analysis Div., CCB, Febr. 2002, Table 5 (reporting that RBOCs provide 86.4% of ADSL technologies).

43 Arizona Consumer Council *et al.* Comments at 59.

thwart competition instead of appropriately responding to it by reducing prices and providing more service options, and because competitors would be denied essential access to BOC bottleneck facilities. Because there is no reason to deregulate "broadband," there is little point in debating in this proceeding an appropriate definition of it.

Nonetheless, it is worth observing that the BOCs urge the Commission to accept definitions and approaches to broadband that would virtually guarantee that the BOCs would be completely deregulated in short order given industry trends. For example, SBC contends that "the *Computer Inquiry* service-unbundling requirements are unnecessary not only for broadband Internet access, but also for any packetized broadband information service."[45] Similarly, Verizon urges that:

> The Commission should expand its definition to cover these new services in order to eliminate regulatory obstacles to the development and deployment of such new technologies. ... A broadband service is either a service that uses a packet-switched or successor technology, *or* a service that includes the capability of transmitting information that is generally not less than 200 kbps in both directions.[46]

In short, it appears that the BOCs would like the Commission to adopt a new definition of broadband, packetized networks and services that would permit the BOCs to escape Title II regulation regardless of their classification as telecommunications services.

Moreover, as pointed out in initial comments, basing a deregulation framework on the speed of a digital service, especially at the low speeds suggested by the BOCs, would mean that the BOCs could obtain deregulation of all their services merely by providing those services over high speed digital networks. Because BOCs can justify increasing use of packet switching

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44 Florida Public Service Commission Comments at 4.

45 SBC Comments at 23.

46 Verizon Comments at 5-6.

technology merely on the basis of cost savings in providing existing services (although they will not want to lower prices), using the BOCs' suggested definitions of broadband as the basis for deregulation would virtually guarantee complete deregulation of all BOC services, including voice. As noted in a number of initial comments, industry observers have predicted that the circuit switched network will soon be replaced by a network providing all services as applications traveling over digital packet-switched facilities using IP protocol.[47] In fact, some CLECs are already providing services in this manner, which enables them to provide more service for less than what ILECs charge.[48] In this environment, all services, including voice, will be merely different software defined applications traveling over digital packetized transmission services. Likewise, in this environment, there will be no meaningful distinction between the network and the Internet. Rather, the Internet will be the network. Accordingly, the Commission should reject the BOCs' self-serving definitions of "broadband."

IX. "BROADBAND" IS NOT A SEPARATE NETWORK

The Commission should also reject the BOCs' erroneous contention that their broadband transmission capability is a separate network that, and, as such, may, or should be, free from Title II regulation. While BOCs suggest in this proceeding that their broadband capability is separate from the existing network, this suggestion is contradicted by the BOCs' own statements. For example, Verizon states that "most local wireline network facilities are used to provide telecommunications services as well as information services."[49] Similarly, BellSouth boasts that it is "systematically transforming our core network from narrowband analog voice to broadband

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47 Lawrence K. Vanston, Ph.D, *The Local Exchange Network in 2015*, TECH. FUTURES, INC., 2001.

48 *See* Comments of Association of Local Telecommunications Services, *et al.*, CC Docket No. 01-338, filed April 5, 2002, at 14.

digital data ... through a disciplined strategy that targets investment and leverages capital into next-generation technologies and assets..."[50] The Florida Commission agreed, arguing that the "local exchange market and the broadband market is inextricably joined."[51]

Moreover, BOC broadband facilities travel through the same wire centers and offices as the existing network, use the same rights-of-way and conduit, and are serviced and managed by the same personnel. In addition, contrary to the BOCs' arguments, ILECs are not "relative newcomers in the broadband market."[52] BOCs' networks have contained a "broadband" capability for years in the form of special access and other high-speed services. ILEC's recent broadband investments are no more than the current phase of on-going upgrades to the existing network, and are not new or particularly innovative developments.

Accordingly, the Commission should reject the BOCs' unsupported claim that deregulation of broadband is appropriate because it is a separate or new capability.

X. WHOLESALE BROADBAND SERVICES ARE TELECOMMUNICATIONS SERVICES

Qwest argues that the ISPs purchasing broadband transmission services from the ILECs are not the "public" for purposes of the common carrier classification.[53] This simply is not true. The term "public" for purposes of the common carrier classification is not limited to the public as a whole. In fact, the definition of telecommunications services specifically states that these services can be offered to "such classes of users as to be effectively available to the public."[54]

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49 Verizon Comments at 41.

50 BellSouth 2001 Report to Shareholders at 6.

51 Florida Public Service Commission Comments at 6.

52 Qwest Comments at 31.

53 Qwest Comments at 17.

54 47 U.S.C. § 153(46).

Moreover, the Supreme Court has recognized that such a general offering to the public can even involve a small and narrowly defined class of users,[55] leaving no doubt that ISPs are members of the public for purposes of this classification.[56] Accordingly, wholesale broadband services offered to ISPs are offered to the "public," and, therefore, are telecommunications services under the Act.

XI. THE COMMISSION MUST MAINTAIN TITLE II REGULATION OF THE TRANSMISSION COMPONENT OF WIRELINE BROADBAND INTERNET ACCESS SERVICE IN ORDER TO MEET NATIONAL SECURITY, NETWORK RELIABILITY, AND CONSUMER PROTECTION GOALS AND REQUIREMENTS

Other than the BOCs, who apparently believe they should be free to discriminate regardless of the cost to the public interest, all parties that submitted comments on this subject agreed that classifying wireline broadband Internet access service as an information service with a transmission component would undermine important national security, network reliability, and consumer protection goals.

A. National Security

Comments submitted by the Secretary of Defense highlight the adverse impact that classifying wireline broadband Internet access services will have on national security and emergency preparedness. The Secretary of Defense makes clear that national security and emergency preparedness communications functions will be best served if the provisioning of wireline broadband Internet access remains classified as a telecommunications service that can be regulated by the FCC under Title II of the Act.[57] The Secretary of Defense cautions that any

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55 *See* AT&T Comments at 19 (citing *Terminal Taxicab Co. v. Kutz*, 241 U.S. 252, 255 (1916)).

56 NewSouth Comments at 12-13.

57 *See* Secretary of Defense Comments at 2-3.

other classification will require the adoption of new rules to ensure that the national security and emergency preparedness communications functions are adequately addressed in a deregulated wireline broadband Internet access service context.[58] Clearly, national security and emergency preparedness concerns will be better served by Title II regulation of wireline broadband Internet access services, and, significantly, these concerns outweigh the BOCs' desire to be free to discriminate in the provision of broadband services.

The majority of parties raise similar concerns relating to the Communications Assistance for Law Enforcement Act ("CALEA") that arise in the context of national security and emergency preparedness. The Department of Justice and the Federal Bureau of Investigation ("DOJ/FBI"), along with numerous ISPs and competitive carriers, state that CALEA extends only to telecommunications carriers.[59] Thus, as noted in the DOJ/FBI comments, classifying wireline broadband Internet access as an information service with a telecommunications component removes such service from the CALEA requirements and, consequently, threatens to deny law enforcement a lawfully mandated point of access for conducting interception of communications and related information using this technology.[60] Exempting wireline broadband Internet access service providers from CALEA would be "contrary to the Commission's prior holding and to law."[61] The DOJ/FBI and the competitive carriers highlight the fact that the statutory and legislative history of CALEA make clear that Congress did not intend for the exemption pertaining to "information services" in CALEA to result in the exclusion of wireline

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58 *See* Secretary of Defense Comments at 2-3.

59 *See* Big Planet, Inc. Comments at 47-48; Business Telecom, Inc., *et al.* Comments at 28-29; Department of Justice and Federal Bureau of Investigation Comments at 1; DirecTV Broadband, Inc. Comments at 37-38; Time Warner Telecom Comments at 28.

60 *See* Department of Justice and Federal Bureau of Investigation Comments at 6.

broadband transmission networks from the scope of CALEA.[62] The DOJ/FBI also emphasizes that Congress intended CALEA to apply to equipment used to connect to the Internet, regardless of whether that connection is through dial-up or broadband access.[63] Classifying wireline broadband Internet access as an information service with a telecommunications component would result in the illogical conclusion that dial-up Internet access is subject to CALEA, while wireline broadband Internet access to CALEA is not.

While SBC and Verizon acknowledge that classifying wireline broadband Internet access services as an information service with a telecommunications component would exempt such services from CALEA,[64] each attempts to minimize the issue by stating that facilities used to provide both broadband and traditional voice services are subject to CALEA.[65] This argument ignores the fact that technological convergence between traditional telecommunications networks and new fiber, broadband networks makes it much more difficult to distinguish between voice and data. In the not so distant future, the Internet will be the network, and, under the definitional approach to deregulation set forth in the *NPRM*, such an environment could threaten to completely undo CALEA requirements.[66] Notably, Verizon alludes to this problem by recognizing that classifying wireline broadband Internet access services as an information service

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61 *See* Department of Justice and Federal Bureau of Investigation Comments at 6.

62 *See* Big Planet, Inc. Comments at 47-48; Business Telecom, Inc., *et al.* Comments at 28-29; DirecTV Comments at 37-38.

63 See Department of Justice and Federal Bureau of Investigation Comments at 12.

64 *See* SBC Comments at 38; Verizon Comments at 41.

65 *See* Verizon Comments at 41.

66 *See* Big Planet, Inc. Comments at 48; Business Telecom, Inc., *et al.* Comments at 28-29; DirecTV Broadband, Inc. Comments at 37-38; Mpower Communications Comments at 12; Time Warner Telecom Comments at 28.

with a telecommunications component could lead to exempting DSL service from CALEA.[67] Accordingly, given that the classification of wireline broadband Internet access service as an information service with a telecommunications component would undermine Congress' intent when it enacted CALEA, the Commission should refrain from removing wireline broadband Internet access from Title II requirements.

B. Network Reliability

For reasons similar to those noted above, network reliability and interconnectivity concerns will be better served if wireline broadband Internet access is subject to Title II regulation. Existing network reliability and interconnectivity regulations are limited to "telecommunications services." If the Commission were to classify wireline broadband Internet access services as an information service with a telecommunications component, none of the rules that address network reliability and interconnectivity would be applicable to wireline broadband Internet access services.[68] As a result, the Commission would have to either adopt new regulations to ensure network reliability and interconnectivity in a deregulated environment, or forego such regulations and hope that the marketplace develops such protections. Retaining Title II regulation of wireline broadband Internet access service will prevent either scenario.

C. Consumer Protections

There is universal agreement among the majority of the non-BOC commenters, including state commissions, consumer advocates, ISPs, and competitive carriers, that classifying wireline broadband Internet access services as an information service with a telecommunications

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[67] *See* Verizon Comments at 41.

[68] *See* Big Planet, Inc. Comments at 48; Business Telecom, Inc., *et al.* Comments at 30; DirecTV Broadband, Inc. Comments at 39-40; Time Warner Telecom Comments at 28-29.

component will adversely impact consumer protection regulations.[69] Many such regulations, such as those concerning discontinuance of service, restrictions applicable to customer proprietary network information, rules relating to truth-in-billing, and safeguards against slamming apply to the offering of a telecommunications service by a common carry and, thus, would no longer apply to wireline broadband Internet access services. Consequently, the deregulatory approach contemplated in the *NPRM* threatens to eviscerate all of these important consumer protections.

The BOCs once again attempt to minimize the negative impact that reclassifying wireline broadband Internet access services would have on consumer protection regulations. SBC and Verizon dismiss such concerns by stating that since carriers will continue to provide voice or other telecommunications services to most of their customers, the Title II customer protections will continue to apply.[70] However, as emphasized above, the technological convergence between traditional voice networks and new fiber, broadband networks will provide both the means and an excuse for the BOCs to claim that even voice services should be deregulated. Indeed, as noted by one state commission, it is safe to assume that the ILECs will argue that the provision of any service, even traditional voice, over broadband facilities removes that service from all state

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[69] *See* Alliance for Public Technology Comments at 6-7; Big Planet, Inc. Comments at 48-51; Business Telecom, Inc., *et al.* Comments at 30-33; California Public Utility Commission Comments at 42; Covad Communications Company Comments at 77; DirecTV Broadband, Inc. Comments at 39-41; Minnesota Department of Commerce Comments at 7; Pennsylvania Consumer Advocates, *et al.* Comments at 23; Rehabilitation Engineering Research Center on Telecommunications Access Comments at 2,4-5; Texas Attorney General Comments at 5; Texas Public Utility Commission at 2,4; Time Warner Telecom Comments at 28-29; Vermont Public Service Board Comments at 6.

[70] *See* SBC Comments at 40-41; Verizon Comments at 42.

consumer protection requirements.[71] There is no reason to believe that the ILECs would not raise same argument at federal consumer protection requirements as well.

The protections afforded by section 255 of the 1996 Act to ensure access for persons with disabilities would also no longer apply to broadband Internet access if such service is reclassified as an information service with a telecommunications component. Numerous advocacy groups, ISPs, and competitive carriers recognized in their comments that reclassifying wireline broadband Internet access services would eliminate important protections contained in Title II of the Act, including the protections of section 255.[72] While Verizon does not directly address the issue of elimination of Section 255's protections for persons with disabilities, Verizon's comments seem to suggest that the Commission could simply adopt new regulations through its ancillary jurisdiction under Title I.[73] It is unclear, however, whether the Commission could assert its jurisdiction under Title I to impose such regulations. The Commission's ancillary jurisdiction under Title I is undefined and there is nothing in the 1996 Act to suggest that Congress meant to leave the Commission plenary power to regulate whatever it sees fit through such ancillary jurisdiction. It equally unclear how the Commission could simply assert Title I ancillary jurisdiction to extend the basic consumer protections applicable to Title II services to Title I services.[74] Crucial consumer protections, such as those for people with disabilities, should

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71 *See* Minnesota Department of Commerce Comments at 7.

72 *See* Alliance for Public Technology Comments at 6-7; Big Planet, Inc. Comments at 48-51; Business Telecom, Inc., *et al.* Comments at 30-33; Covad Communications Company Comments at 77; DirecTV Broadband, Inc. Comments at 39-41; National Association of the Deaf Comments at 2; Pennsylvania Consumer Advocates, *et al.* Comments at 23; Rehabilitation Engineering Research Center on Telecommunications Access Comments at 2,4-5; Rehabilitation Engineering Research Center on Telecommunications Access Comments at 4-5; Telecommunications for the Deaf, Inc. Comments at 8-9; Time Warner Telecom Comments at 28-29.

73 *See* Verizon Comments at 42.

74 California Public Utilities Commission Comments at 43.

not be dismissed under the belief that alternative protections can be developed under a statutory authority that is ambiguous at best. As one commenting party accurately noted, the impact on consumer protections of classifying wireline broadband Internet access services as an information service with a telecommunications component is "just a shot in dark."[75]

D. Intermodal Competition Will Not Sufficiently Protect Consumers

All of the parties that commented on the ability of intermodal competition to regulate consumer protection, other than the BOCs, agreed that intermodal competition would not be sufficient to protect consumers, nor would it result in the deployment of quality and affordable broadband services to American consumers.[76] Aside from the fact that existing broadband service platform are not perfect substitutions for one another, there are many other characteristics of the broadband services marketplace that demonstrate that intermodal competition will not be effective in curbing monopoly abuses.

The ILECs attempt to argue that intermodal competition will act as a counterbalance to discriminatory behavior by any one platform provider of broadband services. Central to this argument is the erroneous allegation that cable operators provide more high-speed access lines than other providers and are therefore dominant in the provision of broadband services. The ILECs claim that since the cable operators serve more lines, ILEC-provisioned broadband services should be deregulated.[77] The central fallacy of this argument is that the degree of intermodal competition cannot be evaluated by simply by comparing the number of consumers

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[75] Covad Comments at 77.

[76] *See* CISPA Comments at 26-27; Business Telecom, Inc., *et al.* Comments at 33-34; California Public Utilities Commission Comments at 41; DirecTV Broadband, Inc. Comments at 33-34; Earthlink, Inc. Comments at 29; KMC and NuVox Comments at 23; Minnesota Department of Commerce Comments at 7; New Hampshire ISP Association Comments at 8; Texas Attorney General Comments at 5; Texas Public Utility Commission Comments at 2,4; Vermont Public Service Board Comments at 12-13; WorldCom Inc., *et al.* Comments at 25.

that receive cable modem service with those that receive DSL service. While this analytical structure in and of itself suggests, incorrectly, that intermodal competition actually consists of only two players, it suffers from a larger deficiency in that it masks the fact that at the local level there is only one provider of broadband services. This fact is alluded to in a recent article on the availability of broadband access to the home, which noted that "[O]verall availability masks considerable variability in competition at the local level – by state, by community, or even by household."[78]

Similarly, state regulatory commission comments in this proceeding indicate that the marketplace for broadband services is highly stratified between cable operators and ILECs, with very little competition between the two platform providers. In fact, a number of state regulatory commissions question whether intermodal competition will act as a restraint on the price for DSL service since cable operators and ILECs are rarely competing for the same customers and other platform providers of broadband services are non-existent.[79] The comments filed by state regulatory commissions describe a landscape of monopoly providers where most areas are dominated by only one provider of broadband services, rather than a vibrant competitive marketplace for broadband services.[80] The California Public Utilities Commission emphasized that SBC is the dominant provider of broadband services to residential and small commercial customers in its service territory. Further, SBC is virtually the only DSL provider throughout its

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77 *See* BellSouth Comments at 16; Qwest Comments at 26; SBC Comments at 13; Verizon Comments at 12.

78 COMPUTER SCIENCE AND TELECOMMUNICATIOND BOARD, NATIONAL RESOURCE COUNCIL, BROADBAND BRINGING HOME THE BITS, at 188.

79 *See* Florida Public Service Commission Comments at 4.; Illinois Commerce Commission Comments at 24; Oregon Public Utility Commission Comments at 2.

80 *See* California Public Utilities Commission Comments at 35-36; Florida Public Service Commission Comments at 4; Illinois Commerce Commission Comments at 24; Public Utilities Commission of Ohio Comments at 33.

service territory and its share of the broadband services marketplace continues to grow.[81] In light of these facts, all of the state regulatory commissions agree that ILEC provision of broadband services should continue to be regulated.[82]

XII. THE COMPUTER INQUIRY SAFEGUARDS REMAIN ESSENTIAL TO PREVENTING DISCRIMINATION BY ILECS

The *Computer Inquiry* requirements were established specifically to address the discrimination and anticompetitive concerns surrounding the ILECs' control over bottleneck transmission facilities that are essential to the development of a competitive information services market. Because the Commission has specifically found that such concerns still exist in the information services market, it has imposed the *Computer Inquiry* requirements on advanced services, including high-speed transmission services.[83] Contrary to the BOCs' arguments, there have been no dramatic changes in the market or regulatory landscape that would warrant removal of these *Computer Inquiry* safeguards.[84] Nor are there technological distinctions with broadband services that would justify a different regulatory regime.[85] Indeed, the *Computer Inquiry* decisions were crafted purposely to take into account existing advanced and future information services. Thus, the requirement that the ILECs unbundle the underlying transmission component from the information services and offer transmission capacity to unaffiliated ISPs under the same

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81 *See* California Public Utils. Comm'n Comments at 34.

82 *See* California Public Utilities Commission Comments at 36; Michigan Public Service Commission Comments at 2; Minnesota Department of Commerce Comments at 7; New York State Department of Public Service Comments at 2-3; Oregon Public Utility Commission Comments at 2-3; Public Utilities Commission of Ohio Comments at 33; Texas Attorney General's Office Comments at 4; Vermont Public Service Board Comments at 6-9; Wisconsin Public Service Commission Comments at 2.

83 *CPE/Enhanced Services Unbundling Order*, 16 FCC Rcd. at 7421; *Frame Relay Order*, 10 FCC Rcd. at 4580.

84 *See* Cbeyond, *et. al.* Comments at 50-60; AT&T Comments at 40-42.

85 *Id.*

tariffed terms and conditions under which they provide such services to their own ISPs, applies to broadband services as well.

The BOCs argue that intermodal and intramodal competition justify elimination of the *Computer Inquiry* safeguards.[86] This argument, however, is misplaced.[87] The *Computer Inquiry* safeguards were implemented to protect ISPs from discriminatory rates, terms, and conditions governing access to the underlying transmission capacity upon which the ISPs are dependent to provide their information services. Contrary to Qwest's claim,[88] ISPs cannot simply turn to competing CLECs, cable modem providers and satellite providers for the broadband transmission needed for their Internet access services. CLECs have faced formidable barriers to entry in building their networks and have nowhere near the extensive ubiquitous network, especially the critical "last mile," that the ILECs possess. Cable operators and satellite providers, on the other hand, are not required to provide ISPs access to their transmission facilities.[89] Thus, the ILECs' network continues to be "the primary, if not exclusive, means through which information service providers can gain access to customers."[90] This core assumption underlying the *Computer Inquiry* requirements is equally valid today.

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86 BellSouth Comments at 16; Qwest Comments at 26.

87 As demonstrated in the majority of the comments filed in this proceeding, intermodal and intramodal competition does not exist on a level sufficient to alleviate the anticompetitive and discriminatory concerns underlying the *Computer Inquiry* requirements. Despite the BOCs' claims, intramodal competition is scant at best. As of June 30, 2001, competing local exchange carriers only provided 7% of the ADSL high speed lines, while the BOCs provided nearly 87%. See "High-Speed Services for Internet Access: Subscribership as of June 30, 2001," Industry Analysis Division, Common Carrier Bureau, Feb. 2002, Table 5. As for intermodal competition, ISPs simply do not have access to the facilities of other broadband providers, such as cable, satellite and wireless.

88 Qwest Comments at 23.

89 While a few cable operators may be offering one or two ISPs access to their cable transmission facilities, this is a far cry from the hundreds of ISPs that have access to their customers through the ILECs' common carrier transmission facilities. *See* Qwest Comments at 30 (offering consumers access to over 400 independent ISPs).

90 *NPRM* at ¶ 36.

BellSouth also argues that applying the *Computer Inquiry* rules to only one broadband provider is anticompetitive and discriminatory.[91] BellSouth argues that no other broadband providers are subject to the unbundling requirement in the provision of broadband services and that deployment of broadband will only occur if there is a "level playing field in a de-regulatory environment.[92] Taking the latter point first, it already has been amply demonstrated that broadband deployment is occurring in a "reasonable and timely fashion" despite the *Computer Inquiry* requirements and Title II regulation. As for the former point, it is widely recognized that different service providers may be subject to varying regulations in order to recognize the differences between them and that different regulatory regimes may be necessary to promote competition.[93] Even assuming that the Commission's decision in its *Cable Modem Declaratory Ruling* was correct, the need for common carrier regulation of the ILECs' dominant services and facilities remains. Unless significant changes have occurred in the ILECs' control over wireline transmission facilities, which is not the case, then the ILECs must continue to be regulated as the monopolists they are.

In its comments, Qwest makes the following statement:

> As the Commission has observed, [the] *Computer II* unbundling rule was designed specifically to address the 'service and market characteristics prevalent' in the local exchange market more than a decade ago. Those market characteristics included complete or near-complete ILEC dominance of the only 'basic transmission service' potentially available for the provision of enhanced services. In particular, the *Computer II* unbundling rule was designed to prevent carriers from using their '*market power* and control over the communications facilities *essential to the provision of enhanced services*' to discriminate against unaffiliated information service providers in order to obtain anticompetitive advantages in the information services market. Indeed, ILECs were often then the *only* providers of the services that the information service provider required, and

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91 BellSouth Comments at 19.

92 *Id.*

93 *Third Section 706 Report*, 17 FCC Rcd. at ¶ 133.

> 'nondiscriminatory access . . . to basic transmission services by all enhanced service providers' was necessary given that that [sic] enhanced services were at that time '*dependent* upon the common carrier offering of basic services.'[94]

Qwest does go on to argue that the ILEC monopoly conditions it describes above do not exist in today's broadband market and that the *Computer Inquiry* rules are unnecessary. Qwest is wrong. Rather, Qwest's description of the justification for the *Computer Inquiry* rules provides an accurate summary of the current market conditions, and the need for retention of those rules.

Contrary to the BOCs' claims,[95] they do continue to have bottleneck control over networks used to deliver broadband access. As the Commission itself recognizes and as demonstrated in this proceeding, the ILECs are still dominant in the local exchange market and exchange access market and broadband services are provided over these same local exchange and exchange access facilities.[96] In addition, ISPs do not have ready access to other facilities to provide their Internet access services and, thus, are still dependent upon these essential ILEC bottleneck facilities to provide their services.[97] The Commission made these assessments recently, not just at the time of the *Computer Inquiry*. Therefore, without regulatory safeguards, such as the *Computer Inquiry* rules and Title II, the BOCs will use their "*market power* and control over the communications facilities *essential to the provision of enhanced services*' to

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94 Qwest Comments at 25-26 (citations omitted).

95 SBC Comments at 24; Qwest Comments at 34-35.

96 Cbeyond, *et al.* Comments at 31 (citing Separate Statement of Chairman Michael K. Power, CC Docket No. 01-337, at 1 (rel. Dec. 10, 2001)).

97 As pointed out in the comments, technological differences between narrowband and broadband do not serve as the basis for the *Computer Inquiry* rules. Rather, ILEC control over the local loops and high speed transmission facilities is the key factor; control which still exists today. Moreover, much of the ILECs' broadband networks consist of routine upgrades, and are not, as the ILECs suggest, completely separate and new network facilities designed solely for broadband services.

discriminate against unaffiliated information service providers in order to obtain anticompetitive advantages in the information services market."[98]

Given that the Commission and the industry have fought for decades to introduce competition in the local exchange market, it is hard to believe that somehow, miraculously, in the last six months the ILECs have relinquished control over their bottleneck transmission facilities. The bottom line is that the core assumptions underlying the reasons for implementation of the *Computer Inquiry* rules still apply today and, thus, retention of the *Computer Inquiry* safeguards are critical to the future of the broadband information services market.

The BOCs argue that they have an incentive to offer consumers a choice of ISPs and to make the necessary service elements available to them,[99] and that customer loyalty to their ISP of choice will drive this incentive. If the BOCs allegation were true, however, then it is likely that there would be more ISPs gaining access to their customers over cable systems. The reality is that a very limited number of ISPs actually have such access and not all cable companies are providing such access, given that they operate under a regulatory regime that does not require them to do so. Indeed, the cable companies have only provided access to independent ISPs under extreme pressure from regulators and consumer groups.

Moreover, as the experience in the cable industry demonstrates, only the few largest of ISPs, if any, will have the bargaining power to enter into reasonable and non-discriminatory arrangements with the dominant ILECs. Clearly, the ILECs have countervailing incentives as monopolists to discriminate against competitors in the information services marketplace by denying access or conditioning access on unreasonable prices, terms and conditions. For

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[98] Qwest Comments at 25.

example, it is a virtual certainty that, absent regulation, Qwest would not be offering its transmission services on a non-discriminatory basis to over 400 independent ISPs like it does now as a common carrier.[100] In addition, for those few ISPs that would be able to obtain such access, it would almost certainly not be under the same terms and conditions that the ILEC-affiliated ISPs enjoys. Thus, is the *Computer Inquiry* safeguards are lifted, the Commission will see a dramatic change in the information services landscape. The innovative, vibrant and extremely competitive information services market, which currently consists of hundreds of independent ISPs, will shrivel to a few large ISPs lucky enough to gain access to ILEC bottleneck facilities competing with the ILEC-affiliated ISPs for market share. The ILECs, with a demonstrated history of little action in innovation and deployment of new technologies and services unless subject to competition, will control this market.

Finally, other parties in this proceeding have recommended that the Commission revise and/or impose stricter enforcement of the *Computer Inquiry* requirements.[101] CISPA supports stricter enforcement of the *Computer Inquiry* rules that would make the BOCs more accountable for their obligations to provide the underlying transport of bundled transmission and information services to competing ISPs on non-discriminatory terms and conditions. CISPA also supports other commenters' suggestions for implementation of performance metrics, audits and enforcement penalties to ensure that the BOCs comply with the *Computer Inquiry* rules.

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99 Qwest Comments at 27-28, 30.

100 Qwest Comments at 30.

101 Earthlink Comments at 31-35; AT&T Comments at 56-61.

XIII. THE EFFECT OF THE COMMISSION'S PROPOSALS ON USF FURTHER DEMONSTRATE THE INCONSISTENCY OF THOSE PROPOSALS WITH THE STATUTE

A. The BOCs' USF Arguments Expose the Stark Self-Interest of Their Proposal To Reclassify ILEC Broadband Services From Telecommunications Services To Information Services

BellSouth and SBC each unabashedly take highly inconsistent, yet not surprisingly self-serving, positions in their comments concerning the regulatory classification of broadband services. On the one hand, in order to escape regulation, they argue, with respect to the broadband transmission services they provide to ISPs and end users that such services are neither telecommunications services nor telecommunications. Yet, on the other hand, with respect to which broadband providers should contribute to universal service, the subsidies of which go predominantly to ILECs, argue that cable modem and ISP broadband providers should be considered providers of telecommunications that must contribute to USF. For example, at the same time that BellSouth argues its own broadband Internet access service is an information service, and thus should be deregulated, it claims that the ISPs that offer such service to their customers are "by definition ... providers of interstate telecommunications."[102] In typical fashion, the ILECs want the best of both worlds – one interpretation that benefits them, and a separate interpretation that harms their competitors and benefits them. The absurdity of BellSouth's contradictory arguments highlights its self-serving position on the statutory classification issue. Under BellSouth's proposed interpretation, a BOC providing broadband Internet access provides only an information service while an ISP providing broadband Internet

[102] *Cf.* BellSouth Comments at 10-11 and BellSouth Comments at 31. *See also* SBC Comments at 45 ("all providers of telecommunications, including . . . ISPs and other content providers" should contribute to USF) and at 17 ("For the same reasons as in the cable modem context, wireline broadband Internet access services *uses* 'telecommunications'") (emphasis in original).

access provides telecommunications. The BOCs cannot have it both ways. Wireline broadband Internet access either includes the provision of telecommunications (or a telecommunications service) or it does not.

As described above and in other comments, ILEC wireline broadband Internet access does in fact include the provision of a telecommunications service, or, at the very least, the provision of telecommunications. The BOCs' self-serving attempt to broaden the USF contribution base by capturing previously unregulated services at the same time they seek inconsistently complete deregulation of their own offerings of those services only demonstrates the absurdity of their position. For all of the reasons noted in initial comments, and in order to ensure the sufficiency of USF, the Commission should reject its tentative conclusion to reclassify wireline broadband Internet access service and determine that provision of such service includes the provision of a telecommunications service that is subject to Section 251, the *Computer Inquiry* requirements, and USF contribution obligations.

B. The Commission May Not Use This Proceeding to Determine that IP Telephony or VOIP Is a Telecommunications Service that Is Subject to Universal Service Contribution Obligations

In Section IV of the *NPRM*, the Commission seeks comment on "what universal service contribution obligations such providers of broadband Internet access should have as the telecommunications market evolves, and how any such obligations can be administered in an equitable and non-discriminatory manner."[103] It also asks whether commenters expect voice traffic to migrate to broadband Internet platforms and if so, what the impact of such migration

[103] *NPRM* at ¶ 66.

would be on the Commission's ability to support USF.[104] Not surprisingly, certain ILEC interests are attempting to use this proceeding to sweep IP telephony and Voice over Internet Protocol ("VOIP") into the category of a regulated telecommunications service and to subject such services to USF contribution obligations.[105] The Commission has rejected such efforts before and it must do so again in this proceeding.

The Commission did not seek comment in this proceeding on whether IP telephony or VOIP is a telecommunications service or information service. As the Commission has previously determined, it should not and will not classify such services as telecommunication services unless and until it has a complete record on which to evaluate the nature of the services.[106] Any characterization of an evolving IP service for regulatory purposes without a detailed analysis would be futile and prejudicial. As the Commission previously found:

> [w]e defer a more definitive resolution of these issues pending the development of a more fully-developed record because we recognize the need, when dealing with emerging services and technologies in environments as dynamic as today's Internet and telecommunications markets, to have as complete information and input as possible.[107]

The Commission has also addressed ILECs' attempts at back-door regulation of IP telephony and VOIP in the context of a universal service proceeding:

> [T]his Commission in its *April 10, 1998 Report to Congress* considered the question of contributions to universal service support mechanisms based on revenues from Internet and Internet Protocol (IP) telephony services. We note that the Commission, in the Report to Congress, specifically decided to defer making pronouncements about the regulatory status of various forms of IP telephony until the Commission develops a more complete record on individual service offerings. We, accordingly, delete language from the instructions that

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104 *NPRM* at ¶ 82.

105 *See* NECA Comments at 4-5, FW&A Comments at 22-23.

106 *Federal-State Joint Board on Universal Service,* Report to Congress, 13 FCC Rcd. 111501, ¶ 90 (1998).

107 *Id.*

> might appear to affect the Commission's existing treatment of Internet and IP telephony.[108]

The Commission should not permit similar attempts in this proceeding.

The record in this proceeding focuses on what USF obligations should be imposed on providers of wireline broadband Internet access services. The record necessary to define IP telephony and VOIP,[109] and to determine whether such services are telecommunications services that should be subject to a host of regulatory requirements, did not exist in the *Report to Congress* or the *Telecommunications Reporting Worksheet* proceeding and does not exist in this proceeding. A hasty and uniformed decision in this proceeding could negatively impact a number of other important policy objectives. For instance, it could undermine the United States' position that IP telephony should not be subject to international regulation or the international settlements regime.[110] Because the implications of determining that IP telephony or VOIP are telecommunications services subject to USF obligations would extend far beyond this proceeding, the Commission should affirm its prior findings that such a determination will not be made unless and until a more complete record is developed on individual service offerings.

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[108] *1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket No. 98-171, Report and Order, ¶ 22 (rel. July 14, 1999) (footnotes omitted).

[109] As the Commission has previously recognized, these broad service categories may include many different types of services, including computer-to-computer, computer-to-phone, and phone-to-phone.

[110] *See, e.g.*, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, FCC 98-67, ¶ 93 (rel. April 10, 1998) ("*Report to Congress*").

XIV. CONCLUSION

For the reasons stated herein, the Commission should conclude this proceeding consistent with CISPA's recommendations.

Respectfully submitted,

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Dated: July 1, 2002